

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

Yaoguang “Vincent” MA,

Plaintiff,

v.

**UNITED STATES CITIZENSHIP AND
IMMIGRATION SERVICES (“USCIS”),
and UNITED STATES IMMIGRATION
AND CUSTOMS ENFORCEMENT
(“ICE”)**

Defendants.

No. 11-04382

COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF

1. Yaoguang “Vincent” Ma brings this action under the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, and the Immigration and Nationality Act, 8 U.S.C. § 1229a(c)(2). He seeks the disclosure and release of agency records improperly withheld from him by defendants United States Citizenship and Immigration Services and United States Immigration and Customs Enforcement.

Jurisdiction and Venue

2. This Court has both subject matter jurisdiction over this action and personal jurisdiction over the parties pursuant to 5 U.S.C. §§ 552(a)(4)(B) and 8 U.S.C. § 1229a(c)(2). This court also has jurisdiction over this action pursuant to 28 U.S.C. § 1331. Venue lies in this district under 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1391(e).

The Parties

3. Plaintiff Vincent Ma is a resident of Cook County, Illinois. He is a citizen and national of the Peoples Republic of China and has been a lawful permanent resident of the United States since April 30, 2005.

4. Defendant USCIS is an agency of the Executive Branch of the United States Government, within the United States Department of Homeland Security (“DHS”). It adjudicates immigrant visa petitions and applications for adjustment of status. It has possession and control over the records that Mr. Ma seeks.

5. Defendant ICE is also an agency of the Executive Branch within the DHS. It enforces the U.S. immigration laws and prosecutes foreign nationals placed in removal proceedings. It has possession and control over the records that Mr. Ma seeks.

Factual and Procedural History

6. Mr. Ma applied for lawful permanent residence in the United States based on an approved petition for an international manager, and USCIS granted this application on April 30, 2005.

7. A supervisory USCIS officer placed Mr. Ma in removal proceedings in May 2010, alleging that Mr. Ma obtained his residency by submitting a false employment letter.

8. Shortly after this, in July 2010, Mr. Ma requested his complete immigration file or A file by submitting a Freedom of Information Act (“FOIA”) request to USCIS’s National Records Center. Because Mr. Ma was in removal proceedings, he asked that USCIS “fast-track” his FOIA request. The National Records Center acknowledged receiving this request a couple weeks later.

9. Nonetheless, USCIS failed to substantively respond to Mr. Ma’s request for three months. When Mr. Ma did not receive a response by November 2010, his lawyer contacted USCIS’s National Customer Service Center to ask about the status of Mr. Ma’s request. The National Customer Service Center could not provide any information beyond reiterating that the request was pending.

10. A few days later, USCIS partially responded to the FOIA request. USCIS claimed it possessed 196 pages of documents responsive to Mr. Ma’s request but was releasing only 139 in full. It withheld 28 pages in full and 11 pages in part under the

FOIA exemptions in 5 U.S.C. §§ 552(b)(5), (b)(7)(C), and (b)(7)(E) and under Privacy Act exemptions in 5 U.S.C. §§ 552a(d)(5) and (k)(2). It referred 12 pages to US-VISIT to determine whether they could be disclosed and referred another six pages to U.S. Customs and Border Protection for a similar determination.

11. USCIS did not provide Mr. Ma with a log or index describing the withheld material and explaining why it was exempt from disclosure under FOIA or the Privacy Act. Therefore, on November 18, 2010, Mr. Ma administratively appealed USCIS's decision to withhold all these documents.

12. A few days later, US-VISIT released the documents USCIS had referred to it and USCIS released two of the six pages it had referred to U.S. Customs and Border Protection. USCIS also released further information on one of the pages it withheld in part, although it continues to withhold other material on this page.

13. On June 23, 2011, U.S. Customs and Border Protection released the remaining documents referred to it although with numerous redactions.

13. USCIS continues to withhold 28 pages in full and 11 pages in part from Mr. Ma's A file. Furthermore, it continues to withhold in part four of the six pages referred to U.S. Customs and Border Protection.

14. ICE has also not released any of these requested documents to Mr. Ma since Mr. Ma was placed in removal proceedings.

Count I – Freedom of Information Act

15. USCIS's failure to disclose the withheld and partially withheld documents violates the FOIA. There is no lawful basis for withholding these documents.

16. Mr. Ma has exhausted his administrative remedies for obtaining these documents as described in paragraphs nine and eleven.

Count II – Violation of 8 U.S.C. § 1229a(c)(2)

17. USCIS's and ICE's failure to disclose the withheld and partially withheld documents also violates 8 U.S.C. § 1229a(c)(2), which requires the government to

provide aliens in removal proceedings with documents regarding their admission to or presence in the United States.

Request for Relief

WHEREFORE, Mr. Ma prays that this Court:

- A. order USCIS and ICE to disclose the requested records in their entireties and make copies available to him;
- B. award him his costs and reasonable attorneys fees incurred in this action; and
- C. grant such other relief as the Court may deem just and equitable.

Respectfully submitted,

s/Scott D. Pollock
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